

REMARKS

Reconsideration and continued examination of this application is respectfully requested. Claims 1-3 and 5-18 are pending in this application. Claim 18 is new.

1. Status of the Claims

Claims 1-3 and 5-18 are pending in this application. Claim 18 has been added. Minor amendments have been made to the claims without affecting the scope of the claims. Claim 17 has been amended to correct informalities as noted by the Examiner in paragraph 3 of the September 13, 2005 Office Action. Support for new claim 18 can be found in the specification as originally filed in paragraph 0019.

2. 35 U.S.C. §112, Second Paragraph Rejections

Claim 17 is rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claim 17 was amended to change granola or snack food products to granola or snack food product, and thus antecedent basis now exists for the granola or snack food product of claim 17, line 4. Applicants respectfully request the rejections under 35 U.S.C. §112, second paragraph be withdrawn.

3. Prior Art Rejections

Claims 1-3, 5, and 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,451,488 to Cook et al. (Cook). Claims 6, 7, and 17 are rejected under 35 U.S.C. 103(a) as being obvious over Cook in view of U.S. Patent No. 4,784,867 to LaBaw et al. (LaBaw).

a. Cook Does Not Teach Or Suggest The Claimed Method Of Mixing Dry Mix Ingredients With A Liquid Binder Consisting Of Less Than About 6% By Weight Water And At Least About 94% By Weight Sugar At Elevated Temperatures.

Claims 1-3, 5 and 8-16 were rejected under 35 U.S.C. § 103(a) as being obvious Cook. The Examiner contends that Cook discloses a process for preparing a granola

food bar including mixing granola with a liquid binder consisting of sugar and water at an elevated temperature (125-135° F), forming and pressing the mixture into a food bar, and cooling to room temperature. Applicant respectfully traverses the rejections of claims 1-3, 5 and 8-16.

The method of the present invention includes mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar. Claims 9 and 17 require mixing dry mix ingredients with a fat-free binder consisting essentially of less than 6% water and at least 94% by weight sugar. As such, these claims properly exclude the mixing or addition of fat or any other material component to the binder system. Both the binder solution and the dry mixed ingredients are heated. The binder ingredients in Cook are not at least 94% by weight sugar. Cook clearly teaches a binder solution wherein "the sugar content is relatively low..." and which includes "sugars, e.g. sucrose, invert sugars, corn syrup, and shortening; salt, flavoring, antioxidants, and a combination of sorbitol and glycerol." Cook at col. 2, lines 36-43 and col. 3, line 40 – col. 4, line 52 (Table I and Examples I-II). The sugar content of the liquid binder is much less than 94%, rather it is only 29-30%. Cook at col. 3, line 58 – col. 4, line 52 (Examples I-II).

The Examiner admits that Cook's composition which is used as a binder contains additional ingredients, but the Examiner contends that such materials are not actually binders per se. September 13, 2005 Office Action at pg. 3. Applicant respectfully traverses this rejection. This is not the teaching of Cook. Cook states several times throughout that the binder contains ingredients in addition to sugar. For example: at col. 2, lines 40-41 "a binder system including sugars, e.g. sucrose, invert sugars, corn syrup, and shortening", at col. 3, lines 7-8 "a binder such as shortening or corn syrup" and at col. 4, lines 6-8 "[t]he binder ingredients, i.e. the sugars, glycerin, sorbitol, and corn syrup".

Cook does not teach or suggest the claimed method, and in fact explicitly teaches away from the present invention. Cook discloses various binders, none of which teach or suggest the present invention. For example, one binder of Cook is shortening or corn syrup. Cook at col. 3, lines 7-8. Cook further discloses a binder

system of low sugar content, corn syrup, shortening and sorbitol and glycerol. Cook at col. 2, lines 40-45.

Moreover, despite the Examiner's assertion to the contrary, it is well-known in the art that fats are binders. Cooks binder composition includes fat. Cook at col. 3, lines 7-8 states "a binder such as shortening or corn syrup". Other references of record show that it is beyond dispute that fat materials such as shortening are binders. In U.S. Patent No. 5,275,830 to Smith (Smith) states that ingredients for a snack bar are typically mixed "with a binder such as a sugar syrup or shortening". Smith, col. 1, lines 13-19. Additionally, U.S. Patent No. 5,413,805 to Delpierre, III et al. (Delpierre) states that a food bar may be formed by mixing ingredients "with a binder such as a sugar syrup and/or fat or shortening". Delpierre, col. 1, lines 15-20.

The Examiner refers Applicant to paragraph no. 7 of Paper No. 031605 where the Examiner concludes that since the binder does not exist within the final product as a distinct system, how the binder is characterized is irrelevant and that it is the final product components that are pertinent to the invention. Applicant respectfully traverses this assertion. Applicant is claiming the method of preparing the granola or snack-food product and not the final product itself. As such, it is the method that must be examined and not the final product. In the claimed method, the binder is added to the other ingredients separately, and therefore the components of the binder are pertinent. In the present invention, the liquid binder of at least 94% sugar and less than 6% water at an elevated temperature are added to the dry mix ingredients which are also at an elevated temperature. This differs from Cook where the binder ingredients include shortening and other ingredients and are not limited to sugar and water. The binder ingredients of Cook are mixed together at an elevated temperature, and then added to the dry mix ingredients which are not at an elevated temperature. This method differs substantially from the method of the present invention, and whether or not the final product of the present invention may contain some fat is not pertinent to the claimed method and its differences from Cook.

The present invention as claimed is patentable over Cook for additional independent reasons. Significantly, Cook does not teach or suggest mixing both dry

ingredients for a granola or snack food product with a liquid binder at an elevated temperature as claimed in method claims 1-2 and 4-18. Rather, Cook discloses in col. 4, lines 6-15 that dry ingredients, such as granola mix, dried fruit, crisp rice, and peanuts are blended separately from the binder ingredients. Additionally, in Cook, only the binder ingredients are disclosed as being mixed at an elevated temperature. In particular, the binder ingredients of Cook, sugars, glycerin, sorbitol, and corn syrup, are disclosed as being "mixed separately" with salt and an antioxidant and heated to 125–135° F. Thereafter, the binder mixture is added to the pre-mixed dry ingredients and blended. Cook, col. 4, lines 1-20. Thus, Cook teaches away from the present invention by separately blending the dry ingredients and binder ingredients, and further by only blending the binder ingredients at an elevated temperature. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical.*, 837 F.2d 469 (Fed. Cir. 1988). In view of the above, claims 1-3, 5 and 8-16, and all claims dependent thereon, are not obvious over Cook because Cook does not disclose mixing ingredients for a granola or snack food product with a liquid binder at an elevated temperature as required in the claimed invention.

b. Cook And LaBaw Do Not Teach Or Suggest A Granola Product Formed By A Liquid Binder Prior To Cooling To Reduce Waste

Claims 6, 7 and 17 were rejected under 35 U.S.C. §103(a) as being obvious over Cook in view of LaBaw. Examiner contends that it would have been obvious to form the food bar in Cook by using a cutting step since it is old to prepare granola-type food bars by cutting and then cooling, as evidenced by LaBaw. Applicant respectfully traverses the rejections of claims 6, 7 and 17.

The differences between the present invention as claimed and Cook and LaBaw are significant and are not obvious in view of Cook and LaBaw as there are significant advantages provided by the present invention. The claimed invention specifically discloses that by mixing the binder and snack-food product ingredients at substantially the same temperature during mixing, the binder remains a liquid during the mixing and enables product precursor to be more easily formed prior to cooling. Specification page

3, lines 1-9. Cook has no teaching or suggestion whatsoever that mixing the dry base ingredients and binder ingredients at the same temperature would result in superior product formation.

Additionally, LaBaw teaches cooling the product through a cooling tunnel at 40 degrees F in order to set the binder and then cutting the product and allowing the product to cool to room temperature. LaBaw, col. 7, lines 55-59. The claimed method cuts and forms the granola product before the liquid binder is cooled to a temperature where it is allowed to set, not after the binder is set. Cutting the product before the binder is set provides a significant advantage as it reduces waste by enabling food fragments collected at any stage of the method to be returned to the starting materials such that no food materials are wasted. In particular, as discussed on page 1, lines 20-24 of the Specification, the claimed invention is an advance over the prior art because known methods of making granola or snack products require the step of breaking or cutting a cooled, dried sheet into desired sizes. Such cutting or breaking results in small pieces of the product, such as nuts or fruit, to break off before packaging of the product. A sieving step is thus required to remove the small bits from the finished product and such small bits are normally discarded as waste.


Instead of discarding such fragments, the claimed invention allows these normally discarded fragments to be optionally passed back to the starting materials. Since the binder materials and granola or snack-food ingredients in the claimed invention are mixed together at an elevated temperature, the returned fragments (ingredients in a solidified binder) can be returned to their initial state (ingredients and a liquid binder) when subjected to the elevated temperature. The returned materials are again in the same form as the standard starting materials for the claimed method. Specification page 6, lines 13-27. Therefore, the present invention enables the product to be reversibly formed and broken down into its components as desired. Cook has no disclosure whatsoever which would suggest enable such a reduction of waste fragments because Cook only discloses mixing the binder ingredients and dry base ingredients separately, and only heating the binder ingredients.

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CONCLUSION

Claims 1-3 and 5-18 are in condition for allowance and an early indication of allowance is solicited.

Respectfully submitted,



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